

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

January 30, 2021, for which he was without fault, because he concurrently received FECA wage-loss compensation and Social Security Administration (SSA) age-related retirement benefits without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$685.34 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On September 24, 2008 appellant, then a 55-year-old border patrol officer, filed a traumatic injury claim (Form CA-1) alleging that on September 18, 2008 he sustained a right knee anterior cruciate ligament (ACL) sprain when he stepped out of his service vehicle to the street curb while in the performance of duty. He stopped work on September 23, 2008. Appellant's supervisor noted that appellant's retirement system coverage was under the Federal Employees Retirement System (FERS). On November 4, 2008 OWCP accepted the claim for right knee medial meniscus tear. It subsequently expanded the acceptance of the claim to include right venous thrombosis of other specified veins, right knee derangement of meniscus, right lower osteoarthritis, arthropathy of the right lower leg, and unspecified complication of internal orthopedic implant.³ OWCP paid appellant wage-loss compensation on the periodic rolls effective December 21, 2008.

On January 12, 2021 OWCP forwarded a FERS/SSA dual benefits form to SSA to obtain information as to whether an offset of compensation benefits was required.

On January 21, 2021 OWCP received from SSA a completed FERS/SSA dual benefits form dated January 21, 2021, which indicated that appellant had been in receipt of SSA age-related retirement benefits since January 1, 2019. The form showed appellant's SSA age-related retirement benefit rates with and without a FERS offset. Beginning January 1, 2019, the SSA rate with FERS was \$1,848.00 and without FERS was \$837.70; beginning December 1, 2019, the SSA rate with FERS was \$1,877.50 and without FERS was \$851.00; and beginning December 1, 2020, the SSA rate with FERS was \$1,901.80 and without FERS was \$862.10.

OWCP completed a FERS offset computation on January 28, 2021. The form revealed that the FERS offset each month was \$1,039.70, and every 28 days was \$959.72.

In a January 28, 2021 letter, OWCP informed appellant that it would begin deducting the portion of SSA age-related retirement benefits attributable to his federal service from his 28-day periodic compensation benefits, effective January 31, 2021. It noted that his SSA age-related retirement benefit without FERS was \$862.10. OWCP explained that the amount of FERS/SSA dual benefits to be deducted from appellant's FECA benefits was \$1,039.70 per month, or \$959.72 every 28 days, and that his new net compensation benefit every 28 days would be \$2,685.42.

On February 1, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$25,600.91 had been created for the period January 1, 2019 through January 30, 2021 because appellant concurrently received FECA wage-

³ Appellant underwent OWCP-authorized right knee arthroscopy with debridement on November 5, 2008, total knee replacement on September 28, 2009, revision of total knee arthroplasty with open reduction and internal fixation of proximal tibia fracture on August 27, 2010, and revision of total knee replacement on May 10, 2018.

loss compensation and SSA age-related retirement benefits without an appropriate offset. It determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised him that he could request a waiver of the overpayment. It further requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a precoupment hearing.

OWCP included a FERS offset overpayment calculation which determined the 28-day FERS offset amount for the days in each period and computed a total overpayment amount of \$25,600.91. The offset calculation worksheet indicated that from January 1 through November 30, 2019, appellant received an overpayment in the amount of \$11,124.40; from December 1, 2019 through November 30, 2020, appellant received an overpayment in the amount of \$12,385.68; and from December 1, 2020 through January 30, 2021, appellant received an overpayment in the amount of \$2,090.83. The total overpayment amounted to \$25,600.91.

No response to the preliminary overpayment determination was received.

By decision dated April 5, 2021, OWCP finalized the preliminary overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$25,600.91, for the period January 1, 2019 through January 30, 2021, because he concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without an appropriate offset. It also found that he was without fault in the creation of the overpayment but denied waiver of recovery of the overpayment. OWCP noted that as of the date of the decision, no response had been received to the preliminary overpayment determination and appellant had not requested a waiver. It required recovery of the overpayment by deducting \$685.34 every 28 days from his continuing compensation payments.

LEGAL PRECEDENT

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.⁴ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁵

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁶ FECA Bulletin No. 97-09 states that FECA

⁴ 5 U.S.C. § 8102(a).

⁵ *Id.* at § 8116.

⁶ 20 C.F.R. § 10.421(d); *see M.R.*, Docket No. 20-1622 (issued June 30, 2021); *S.M.*, Docket No. 17-1802 (issued August 20, 2018); *L.J.*, 59 ECAB 264 (2007).

benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁷

ANALYSIS

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$25,600.91, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period January 1, 2019 through January 30, 2021, without an appropriate offset.⁸

The evidence of record indicates that, while appellant was receiving compensation for wage-loss under FECA, he also was receiving SSA age-related retirement benefits based upon his federal service. A claimant cannot receive both compensation for wage-loss under FECA and SSA age-related retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA established that during the period from January 1, 2019 through January 30, 2021, appellant received SSA age-related retirement benefits that were attributable to federal service while he also received FECA benefits that were not reduced by the appropriate offset. Consequently, the fact of overpayment has been established.

To determine the amount of the overpayment, the portion of SSA's benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of appellant's SSA age-related retirement benefits that were attributable to federal service. SSA provided its benefit rates with FERS and without FERS for specific periods from January 1, 2019 through January 30, 2021. OWCP provided its calculations for each relevant period based on the SSA worksheet which show that appellant received an overpayment in the amount of \$25,600.91. The Board thus finds that appellant received prohibited dual benefits for the period January 1, 2019 through January 30, 2021, totaling \$25,600.91.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an individual who is without fault in creating or accepting an overpayment is still subject to recovery of the overpayment, unless adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.¹⁰ Thus, a finding that appellant was without fault does not automatically result in waiver of the

⁷ FECA Bulletin No. 97-09 (February 3, 1997); *see also* *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁸ *P.B.*, Docket No. 20-0862 (issued November 25, 2020); *R.C.*, Docket No. 19-0845 (issued February 3, 2020); *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

⁹ 20 C.F.R. § 10.421(d); *see S.M.*, *supra* note 6; *L.J.*, *supra* note 6.

¹⁰ 5 U.S.C. § 8129(a)-(b).

overpayment, OWCP must then exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience.¹¹

Section 10.436 of OWCP's implementing regulations provides that recovery of an overpayment would defeat the purpose of FECA if such recovery would cause hardship because the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses and also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹² An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³

Section 10.437 of OWCP's implementing regulations provides that recovery of an overpayment is considered to be against equity and good conscience when an individual who received an overpayment would experience severe financial hardship attempting to repay the debt and when an individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse.¹⁴

OWCP's regulations provide that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. The information is also used to determine the repayment schedule, if necessary.¹⁵ Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

¹¹ *L.S.*, 59 ECAB 350 (2008).

¹² 20 C.F.R. § 10.436. OWCP's procedures provide that the assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent, plus \$1,200.00 for each additional dependent. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(2) (September 2020).

¹³ Federal (FECA) Procedure Manual, *id.* at Chapter 6.400.4c(3) (September 2020).

¹⁴ 20 C.F.R. § 10.437; *see J.R.*, Docket No. 21-0485 (issued December 10, 2021); *E.H.*, Docket No. 18-1009 (issued January 29, 2019).

¹⁵ 20 C.F.R. § 10.438(a); *M.S.*, Docket No. 18-0740 (issued February 4, 2019).

¹⁶ *Id.* at § 10.438.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁷

In its preliminary overpayment determination dated February 1, 2021, OWCP requested that appellant complete a Form OWCP-20 and provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. It advised him that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant, however, did not complete the Form OWCP-20 or otherwise submit the financial information necessary for OWCP to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.

Consequently, as appellant did not submit the information required under section 10.438 of OWCP's regulations, OWCP properly denied waiver of recovery of the overpayment.¹⁸

LEGAL PRECEDENT -- ISSUE 3

Section 10.441 of Title 20 of the Code of Federal Regulations provides that, if an overpayment of compensation has been made to one entitled to future payments, proper adjustment shall be made by decreasing subsequent payments of compensation, "taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship."¹⁹ When an individual fails to provide requested information on income, expenses, and assets, OWCP should follow minimum collection guidelines. The Federal (FECA) Procedure Manual provides that, in these instances, OWCP should set the rate of repayment at 25 percent of the 28-day net compensation amount until the balance of the overpayment is paid in full.²⁰

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$685.34 every 28 days from appellant's continuing compensation payments.

OWCP provided appellant a Form OWCP-20 with its February 1, 2021 preliminary overpayment determination and afforded him the opportunity to provide appropriate financial information and documentation to OWCP.²¹ Appellant did not complete a Form OWCP-20 or provide the necessary financial documentation to support his income and expenses prior to the April 5, 2021 final overpayment decision. The overpaid individual is responsible for providing

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 20 C.F.R. § 10.441.

²⁰ Federal (FECA) Procedure Manual, *supra* note 12 at 6.500.8(c)(1) (September 2018).

²¹ 20 C.F.R. § 10.438.

information about income, expenses, and assets as specified by OWCP.²² When an individual fails to provide requested financial information, OWCP shall follow minimum collection guidelines designed to collect the debt promptly and in full.²³ The Board, therefore, finds that OWCP properly required recovery of the overpayment from appellant's continuing compensation payments at the rate of \$685.34 every 28 days.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$25,600.91, for which he was without fault, because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits for the period January 1, 2019 through January 30, 2021, without an appropriate offset. The Board also finds that OWCP properly denied waiver of recovery of the overpayment; and properly required recovery of the overpayment by deducting \$685.34 from appellant's continuing compensation payments every 28 days.

²² *Id.* at § 10.438(a); *see M.S.*, Docket No. 18-0740 (issued February 4, 2019).

²³ *See M.S.*, Docket No. 20-1261 (issued June 10, 2021); *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, *supra* note 12 at Chapter 6.400.3 (September 2020).

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board